October 2016

Port of Whanganui:

Navigation Safety and Operational Review

A review of the navigation safety and port operations functions of the Port of Whanganui.

Capt. J. V. Dilley, Master Mariner, Maritime Consultant and Harbourmaster.

Parts of this report relating to commercial sensitivities or personnel matters have been redacted

Contents

Executive Summary

The current operations and facilities at the port of Whanganui cater to commercial vessels up to 51 m in length and recreational and fishing vessels. The port provides berthing, cargo handling, a launching ramp and warehouse/storage facilities. The physical condition of the facilities varies from recent and in apparently good condition to tens of years old and in very poor condition.

The operations undertaken at the port have developed over time and are tailored to the specific environment and condition of the port infrastructure making best use of the skills of personnel and the plant available. While some of the operations do not meet current best practice they have stood the test of time without incident. There is a quantity of operational knowledge held by a small number of personnel with significant risk that this knowledge may be lost. No succession plan or training of new staff is in place. With few commercial ships visiting the port the workload required to maintain the port operational should be minimal.

Overall the port operates because of the skill and knowledge of those on site rather than in line with an assessed and managed process set up to deliver a certain outcome. The current practices are unlikely to stand up well if compared to current best practice as outlined in the New Zealand Port and Harbour Marine Safety Code.

There are several steps to be followed to ensure a robust assessment and compliance with best practice and these are provided within the report; however, the overarching recommendations are provided below.

To provide Whanganui District Council (WDC) confidence the port is being managed safely and in line with best practice I recommend WDC:

- identifies the vision and purpose for the port
- commits to comply with the New Zealand Port and Harbour Marine Safety Code
- provides the Port Operator clear guidance on any matters that are of particular relevance e.g. 100% cost recovery from users, limitation on any activity such as whether the port provides personnel or plant to load trucks from the storage sheds, inclusion of any activity or operation the port is to provide such as stevedoring services.

I recommend the Port Operator:

- implements a plan to deliver a port fitting the vision and purpose, including compliance with any guidance provided or directed by WDC
- complies with the requirements of the New Zealand Port and Harbour Marine Safety Code
- ensures the infrastructure at the port is fit for purpose, including wharves, mooring bollards, fendering, building structures and roadways.

Discussion and guidance on these matters is provided within this report.

Introduction

A project to revitalise the port area and facilities at Whanganui is currently underway. As part of this project the management of navigation safety and port operational functions is to be reviewed.

The port at Whanganui (the Port) is currently managed by Whanganui Port 2010 (the Port Operator), a Whanganui District Council (WDC) Tupoho Joint Venture Governance. The Port Operator is responsible for the operations of the Port, including:

- maintenance of wharves and jetties (in fit condition)
- loading/discharge of cargo, stores, fuel, and passengers
- providing suitable access to the port for ships (adequate channels, aids to navigation)
- providing information about the port facilities and operating limitations
- providing pilotage and towing (if required)

Importantly, the Port Operator is responsible for providing a safe working environment and a safety system to ensure that the above operations are carried out in a safe manner and that the facilities are fit for purpose.

Note: The Whanganui Harbour Board Act 1988 provides WDC with the functions, duties and powers of a Harbour Board. This will be discussed further within the report. Any reference to a regional council or council within this report can be construed as applying to WDC.

Purpose of this Report

The purpose of this report is to provide a navigation safety and port operational review of the current port of Whanganui. The review is to include all matters related to:

Port Operations:

- vessel navigation
- vessel berthing
- cargo operations
- staffing

Statutory:

- roles of port operator and harbourmaster
- best practice
- safety management systems

Subsequently to make a recommendation as to a way forward based upon the current use of the port and any other factors that may be appropriate.

The recommendations of the report set out a clear and logical pathway to allow WDC to make decisions on the appropriate and effective management of the maritime functions of the port.

In undertaking this review the following organisations and personnel were contacted:

- Maritime New Zealand Victor Lenting

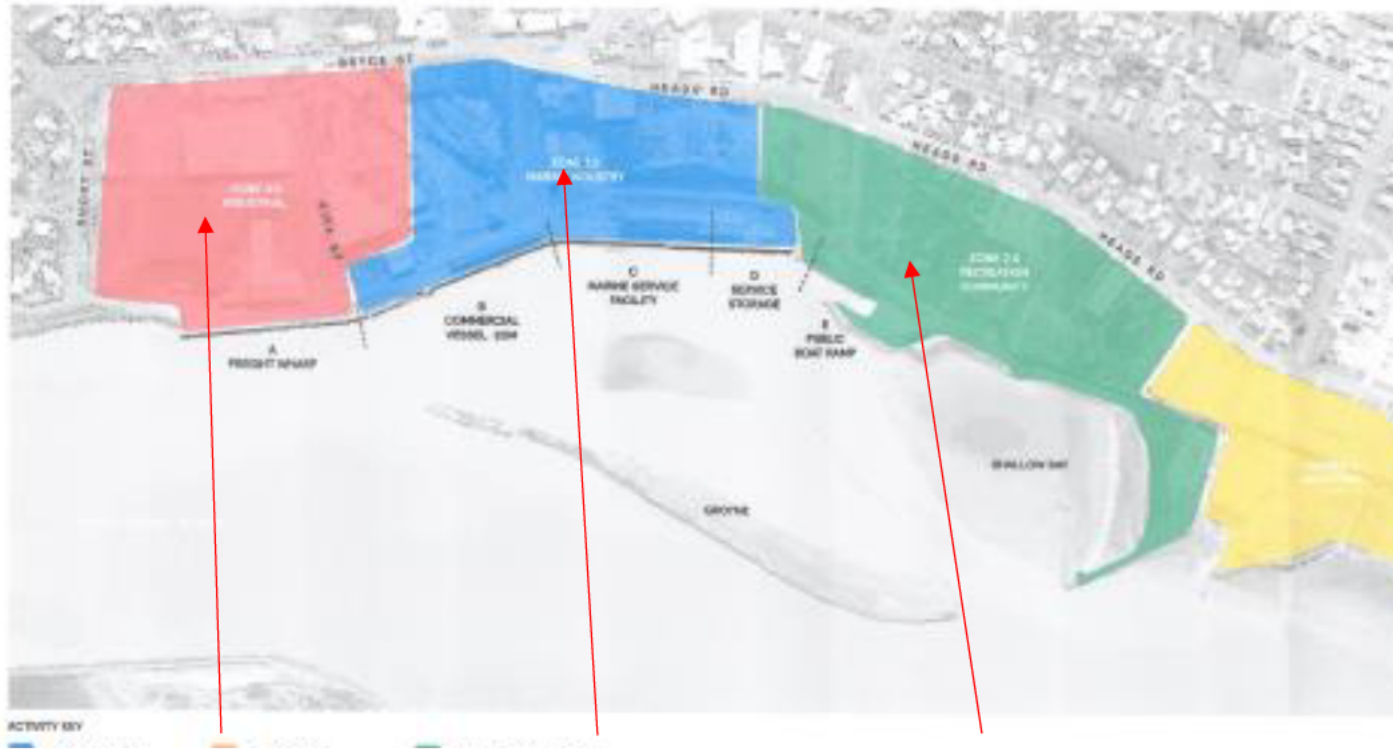
- Coastal Bulk Shipping — Doug Smith
- Horizons Regional Council — Ian Lowe
- Wanganui District Council — Rowan McGregor
- Whanganui Port 2010 — John Blaikie, Rachael Haapu

Existing Whanganui Port

Overview

The port at Whanganui is located at the mouth of the Whanganui river. Port facilities include berths for small coastal trading vessels, fishing/charter and recreational vessels, with 580 m of wharf space. Ashore are three warehouse buildings with 4386 m^2 of storage. The port also operates the city wharf (located upstream of the main port area) and a recreational boat ramp and trailer park.

Future expansion to include a small marine precinct is currently underway. This includes the provision of a marine industries hub, a 200–300 t vessel lift, maintenance facilities and public recreational areas.



Industrial zone *Marine industry* *Recreational*

Shipping and vessel use

The port currently accommodates in the order of four small vessels of approximately 20 m loa. These vessels are moored alongside No.2 wharf. These vessels vary in their use from charter fishing to recreational. A boat launching ramp is situated in the eastern area of the port. This ramp provides launching facilities for trailer vessels. The launching ramp is reported to be regularly used during the summer months by vessels heading out fishing.

The only cargo vessel regularly visiting the port is the 'Anatoki'. The 'Rangitira' last visited in May 2014 and has since been decommissioned. The ' Anatoki' is a general bulk cargo vessel: length overall 51 m; maximum laden draft 4.20 m; gross tonnage 561 t. The 'Anatoki' has used the port for shipping dolomite, logs, urea and barley.

	Number of visits in year ending June				
Vessel	2016	2015	2104	2013	2012
Anatoki	7	10	24	26	10
Rangitira	0	0	3	3	0

Table 1.

Navigation

Access to the port is over a bar and the chart NZ4541 Approaches to Whanganui carries the following note: "Depths on the bar are subject to frequent change and it is dangerous for mariners without recent local knowledge to attempt crossing it. The line of the leads may be altered to suit changes in the channel over the bar. For further information contact the Harbourmaster." The entrance to the port is between the north and south moles.

According to the latest chart the charted depth in the channel and alongside the cargo wharf is 4.9–6.1 m. This information is indicative of the nature of the area but is not up to date. The

controlling factor for the size of vessels able to visit the port will be the bar at the entrance. Currently vessels with a draft of up to 4.2 m may enter or depart near high water.

Local vessels navigate to and from the port regularly. These vessels tend to be fishing/charter and recreational vessels up to 20m in length or less with a draft of up to 2.0m.

Pilotage

Whanganui is not currently a compulsory pilotage area, but according to Maritime Rule Part 90 is listed as a pilotage area for future activation should the director of Maritime NZ decide that compulsory pilotage is necessary in the interests of maritime safety or marine protection. The area for pilotage would then be “all waters encompassed in an arc of a circle radius 2.65 miles centred on North Mole Head light” for vessels of greater than 500 gross tonnes.

Despite not providing a pilotage service the Port Operator does monitor and have active involvement in the arrival of commercial cargo vessels. The Port Operator also operates a vessel it refers to a ‘pilot boat’. As there is no pilotage area, or pilot for Whanganui, this vessel will be referred to as the ‘port work boat’.

M.V. Anatoki approaching Castlecliff wharf

Arrival/departure procedures for cargo vessels

The Port Operator operates a procedure for the arrival and departure of commercial cargo vessels that includes advising such vessels whether or not it is safe for vessels to enter or depart the port. The port work boat will take soundings of the bar prior to the vessels arrival. On arrival of the vessel the port work boat will position itself on the bar and relay the conditions to the vessel’s master. The harbourmaster will be on No.1 wharf, on the line of the leads, with a view across the bar. As the vessel makes its approach to the port across the bar and up the channel the harbourmaster will pass information to the vessel as to whether the vessel needs to move north or south to be in the correct position for entry.

Bar *North Mole* *South mole* *'Te Anau' hulk* *Training wall* *Wall opening channel*

Port Operator staff act as linesmen for the vessel securing mooring lines and letting go on departure. The port work boat may act as a tug to help turn the vessel. Berthing a vessel starboard side to, i.e. facing the bar, is the preferred option when any deterioration in the weather is expected. This position allows a simple and quick departure manoeuvre for the vessel.

The passing of relevant and up-to-date information to a vessel is a sensible practice. However, this practice should be undertaken with a clear understanding of the purpose of the communications i.e. both the harbourmaster providing the information and the ships master receiving it should be clear as to whether the information is:

- an instruction to undertake a certain action;
- pertinent information the master should be aware of;
- an alert that there is a variance from the expected passage plan

There is no pilotage for Whanganui and it is important that all parties understand that any information passed to the vessel does not constitute any form of pilotage service. Similarly, unless the harbourmaster is issuing a direction to the vessel master under the Maritime Transport Act 1994, it is important that the purpose of the information is clear. The Port Operator procedure WPBAD001 Boat Arrival and Departure Flowchart makes specific reference to:

- pilot boat may lead in or travel adjacent to the entering vessel.
- powered vessels greater than 30 metres in length depending on experience of the master may need the services of a maritime pilot.

These statements indicate that there is some confusion regarding pilot use and/or terminology as the 'pilot boat' should not undertake leading and there is no pilot available as the area is currently not a pilotage area under Rule 90.

Aids to Navigation

The Port Operator operates several aids to navigation (Aids) (lights, buoys and beacons) to aid safe navigation. The Aids include a main set of lit lead marks and a secondary unlit set of

leads, a light on each mole, a navigation light (checkerboard light) and some small navigation buoys upstream of the port area.

Corrected to NZ Notices to Mariners Fortnightly Edition No 20, dated 30 September 2016

NORTH ISLAND

Int. K No. (1)	Location – Name (2)	Lat Long S E (3)	Characteristics (4)	Elevation metres (5)	Range miles (6)	Structure Height in metres (7)	Remarks (8)
	WHANGANUI HARBOUR						
4072	- **Whanganui Airport**	39 57.7 175 01.5	Aero Fl W 4s	39	**15**		Aero RC Occas F R on radio mast 0.5 M ESE
4076	- - Centre	39 56.9 174 59.1	Fl R 2s	9	4	Red and white chequered □ on mast 7	*fl 0.5*
4078	- North Head, Bar Ldg Lts 059°. Front	39 56.8 174 59.4	F R	16		Black X on white rectangular beacon	Neon □. Moved as necessary to mark channel over the bar. Traffic signals
4078.1	- - - Rear. 76 m from front	39 56.67 174 59.47	F R	23		Black O, white border, on white triangular beacon, black vertical stripe	Neon □
4081	- - Wharves	39 56.8 174 59.4	F WR(vert)	2	1	On wharf pile	1 m apart
4082	- - Te Anau hulk	39 56.9 174 59.5	Q G	6	2	On fo'c'sle head of hulk	

List of lights at the port from the Nautical Almanac

The south and north mole lights are destroyed and have been out of service for 19 and 4 months, respectively. The main lit leads are in reasonable condition and reported to be operational. The secondary unlit leads are operational but have suffered some vandalism.

The two mole lights are due for replacement. However, the severe nature of the seas experienced at the mole heads, deterioration of the mole structure and difficulty with access has hindered this process. A new light with a six nautical range has been purchased for the south mole head.

North mole light tower tipped over

South mole head and destroyed light tower

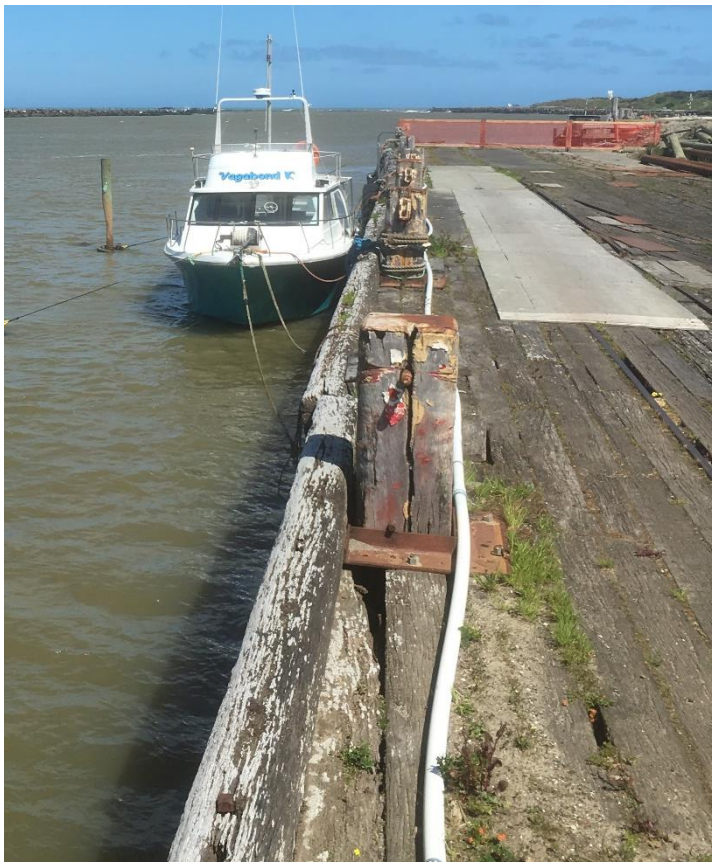
The owner of the MV Anatoki is reported to have stated that the mole lights are important for the safe departure of the vessels at night. The Harbourmaster has reported that the mole lights are particularly used by the masters of recreational and smaller vessels who may not understand the use of leads lights.

It is noted that neither the north nor south mole lights are shown in the *List of Lights* which is extremely unusual unless they have been authorised for removal by Maritime New Zealand. These lights also do not appear on the navigational chart.

Wharves

With the exception of No.1 wharf and the boat ramp the infrastructure of the port appears to be rundown and in poor condition. There is evidence of repair work and ongoing use of the facilities; however, many structures appear unaltered since their construction. In some cases, the facilities may be adequate for their current use. An example of this is the mooring of vessels on No.2 wharf. The condition of the wharf is poor. However, the facilities at this wharf were obviously built for larger vessels and the wharf is likely to be sufficiently sound for mooring vessels less than 20 m length for which it is currently used.

The photograph below shows a vessel moored to No.2 wharf. The poor condition of the wharf is evident with numerous trip and entrapment hazards visible on the wharf deck and plywood covering in some locations. The bollards to which the vessel is secured are showing signs of deterioration with large cracks in the timber.



No 2. wharf condition

No.1 wharf provides approximately 100 m of wharf face for the mooring of vessel(s). The wharf is fitted with a variety of mooring bollards along the wharf face and additional bollards, set back from the water's edge, at the end of the wharf face.

No.1 wharf deck looking west with a concrete mooring bollard in the foreground

No.1 wharf face showing fendering and mooring bollards

This wharf has recently undergone some refurbishment work. The work has resulted in a wharf which is reported to have a deck loading capability equivalent to that of a state highway (i.e. it is able to withstand the loading imparted by large trucks) and has an area where a crane can be positioned and a loading of up to 150 t supported. This wide open wharf deck provides the only working cargo berth for the port. There are no calculated safe working loads for the mooring bollards or wharf fendering.

It is obvious some maintenance and repairs are being undertaken but it is not clear if there is any formal strategic plan or oversight to the maintenance to ensure the facilities are fit for purpose and that the fitness is demonstrable.

Port Plant

The Port Operator operates a variety of plant to service the operations being undertaken. These include:

- the 'Whanganui' a 16.12 m vessel as a port work boat and tug under the Maritime Operator Safety System (MOSS)
- a long reach excavator for cargo loading/unloading operations and dredging
- a barge for use in dredging and facility maintenance (a used barge has been purchased to replace the existing barge which is reported to be beyond economical repair)
- a front end loader for cargo handling ashore.

Long reach excavator for cargo and dredging work

Port work boat 'Whanganui'

It is evident from viewing the plant that each item has been chosen to ensure it is robust and in many cases equipment has been adapted to maximize its use in the port. Examples of this are:

Port work boat: This is a rugged workboat capable of operating in the conditions experienced on the bar, able to provide an approximate 2.5 t bollard pull for tug operations with the barge and ships and fitted with a Hypack 2013 system for sounding the bar area.

Long reach excavator: The excavator is used from the both the wharf and barge for dredging and it is also used for cargo operations. The excavator has a 5 m extension and blade that

may be fitted to allow it to reach further for dredging operations. In this 5 m extended mode it is not used to lift material, but only to bring material within the normal operational reach.

Barge: The new barge is to be refitted to allow it to work as a dredge platform or work barge. The fitting of ‘spuds’, i.e. lifting legs that can be lowered to the seafloor to hold the barge in location, will allow the barge to be securely positioned adjacent to a work area.

The nature of the plant and the ingenuity shown in adapting it for multiple uses is prominent throughout the operation of the port. The ability of the personnel to get the job done where others may falter is unquestionable. However, this does mean that not all modifications have supporting engineering or operational sign off, e.g. the 5 m extension for the excavator has no test or ‘fit for purpose’ sign off.

Operational Practices

There are many demonstrable practices that have developed over time to ensure the safe operation of the port. These practices are not all documented. In particular, the Port Operator has developed some simple operational practices which are cost-effective and reasonable, negating the need for expensive electronic products. Tide gauge: the Port Operator uses a fixed board and visual observation rather than a remote-reading electronic tide height gauge. This is quite appropriate for the operations undertaken.

Tide height gauge

River flow: the river flow direction at the port wharf is gauged by dropping a stick or lump of wood off the wharf and seeing which way it floats.

Swell height and period: the height and period of swell is gauged by viewing the swell break along the south mole. This gives an accurate wave period and whilst the wave height is open to interpretation it is likely to be sufficiently accurate for the intended purpose. The fitting of a wave-rider buoy is likely to be difficult near the bar and costly.

Gauging swell period and height on south mole

Dredge depth: the depth to which an area is dredged is gauged by a painted scale on the arm of the excavator.

Depth scale on excavator arm

Physical boundaries: The Port often uses a physical boundary to mark a specific action point requirement or operational area e.g. as a vessel navigates across the bar it will be advised to move 20-30m north of the leads as it passes the north mole head. The vessel then moves back onto the lead line as it passes the ‘checkerboard light’. Similarly, the high load capability area on No.1 wharf is known as being between the corner of the nearest building and the electrical power box.

Dredging

The Harbourmaster has reported that in general the flow of water through the wall opening and channel scours silt from the port wharves area. However, silt does builds up over time. Occasional silt build up occurs around the boat ramp area and at the knuckle of No.1 and 2 wharves in particular. Dredging is undertaken using the long reach excavator operating from the barge or from the wharf area. Silt is dug from the seafloor and released into the river flow. This use of natural dispersion for the dredge spoil at the site of dredging is unusual in New Zealand, but appears to be effective in this case. This method has a considerable advantage in that there is no costly disposal of dredge material.

Commercial Activities

The Port Operator undertakes many commercial activities. The rental of wharf space and the provision of stevedoring services being a small part. The rental of warehouse and storage space, including bare land, is the majority of the port's commercial business according to the Harbourmaster.

The handling of cargo (stevedoring) at the port is undertaken by the Port Operator. The vessel's crew may undertake cleaning of the hold, but the actual discharge operation via the excavator is undertaken by the Port Operator. Cargo may be loaded or discharged directly to/from road vehicles or to/from one of the many storage areas and warehouses owned by the Port Operator. The Port Operator contracts trucks to move cargo to and from the storage sheds but uses its own long reach excavator to discharge the ship and front-end loader to load trucks.

Safety Management System

The Port Operator operates a Safety Management System. This system documents procedures, planned maintenance, training, registers and agreements. The sample documents viewed provide guidance and requirements for day-to-day activities and checks, including written procedures and flowchart diagrams. The documents were easy to understand and the procedures viewed appeared adequate for the intended purpose.

The system does not document any policies or higher-level statements on the intended use of the port or the scope of the Port Operator's or Harbourmaster's roles. There is no procedure for managing any possible conflict of interest between the roles of Harbourmaster and Port manager. This possible conflict is explained under the section 'Staffing' below. There are also no organisational diagrams depicting reporting lines and authority.

No records of previous audits, checklists or similar historical records were viewed.

The port systems, assessments and operation have not been assessed against the New Zealand Port and Harbour Marine Safety Code (the Code). The Code sets out the roles and functions of various parties involved in port safety and outlines best practice. Whilst the Code is voluntary it is used throughout New Zealand and is the accepted benchmark from which safety management systems are measured.

[redacted]

Overall current operation

The current configuration, use and management of the port reflects a facility that has evolved over time rather than one planned and developed for a set purpose. The practices and operations undertaken at the port are those that work with the minimum of fuss and expenditure, but may not be in line with best practice or today's safety culture. Because of the small number of cargo vessels visiting the port, and the relatively small size of these vessels, the plant and procedures at the port cope adequately with the risks that may be present.

It may be possible for the port to continue operating in the current format. However, there are some key matters that will, sooner or later, create the possibility of significant risk. These matters include:

Stated purpose of Port: with no defined parameter as to the purpose of the port it is extremely difficult to assess the performance and suitability of the current port.

Strategic Plan: there is no clear pathway set down to ensure the port is managed in a way that delivers the required outcome.

Compliance with best practice: there is currently no assessment of compliance with best practice for any port operations.

Infrastructure: there is no assessment and plan for the need and provision of infrastructure. It is unclear if the current infrastructure is fit for the purpose for which it is being used.

Repair and Maintenance: it is evident that the repair and maintenance work being undertaken is not keeping pace with the degradation of the infrastructure.

Staff Succession: there is no planned succession or training of reserve persons for many of the operational roles performed at the port.

Knowledge Base: the day to day operational knowledge and practices of the port are not recorded. This may mean critical information is not passed on or is forgotten as staff leave.

Harbourmaster and Port Manager: a single person undertakes the role of port manager and also fulfils the role of regulator of that same port . There is no documented identification of the possible conflicts of interest or provisions for the management of any possible conflict of interests between the two roles.

Conflict of Interest: the Port Operator employs a single person to act as port manager and Harbourmaster.

Undertaking roles outside of port needs: the Port Operator performs many roles which may be outside of the port's purpose. This is hard to assess as the port has no defined purpose. However, an example is the loading of dolomite onto trucks from the storage shed that could be undertaken by the lessee of the shed or the owner of the cargo or trucking company.

Port and Harbour Marine Safety Code

Overview of the Code

The New Zealand Port and Harbour Marine Safety Code (the Code) is a voluntary national standard for the safe management of marine activities in ports and harbours, to support national and local legislation. It covers all activity associated with the movement of ships entering, leaving and navigating within ports and harbours.

The Code:

- promotes a systems approach to the management of safety to ensure that risks are identified and managed in a structured and sustainable way that fosters continuous improvement
- describes the framework for managing maritime safety in ports and harbours and summarises relevant aspects of the current law
- provides statements of good practice to assist all parties to manage maritime safety within their ports and harbours effectively, and ensure national consistency.

The Code is intended to apply, as a minimum, to any harbour area or commercial port with compulsory pilotage. Councils may also choose to apply the Code to any other enclosed or coastal waters in their regions that they consider to be harbours for the purposes of the Code

Maritime NZ led the Code's development in 2004, and all regional councils (councils) and ports have since adopted it. The Code was reviewed in 2016. Under the revised Code, a tripartite[1] Steering Group, a Working Group, and review panels will focus on ensuring the current standard of safety management is sustained, and continuously improved over the longer term. A new Secretariat position will support the Steering and Working groups in overseeing the on-going implementation of the Code and manage an agreed work programme.

The 2004 Code was supported by a number of guidelines for good practice. The Steering Group, supported by the Secretariat and Working Group will assess the need for guidance, developed in collaboration with port operators and councils. The current guidelines remain available for use. Relevant guidelines for the Port of Whanganui are:

- port and harbour risk assessment and safety management systems in New Zealand
- providing aids to navigation in New Zealand
- good practice for hydrographic surveys in New Zealand
- environmental factors affecting safe access and operations within New Zealand ports and harbours

There are broadly five steps to be undertaken once a party has committed to complying with the Code. These are:

- code application assessment
- risk assessment
- safety management system
- operational implementation
- audit, review and improvement

[1] Maritime New Zealand, regional councils and port companies

What the Code Covers

The Code covers all activities associated with the safe movement of ships entering, leaving and navigating within ports and harbours, including:

- the berthing and securing of ships;
- the safety of ships alongside a berth, on a mooring or at anchor;
- infrastructure, operating systems and practices that support these activities;
- the management of waterways in ports and harbours;
- protection of the marine environment; and
- the safe conduct of commercial maritime transport operations by port operators and councils within a port or harbour.

The main focus of the Code is on the safe movement of ships within commercial port and harbour areas. Although primarily concerned with the safe navigation of ships, some aspects also touch on broader maritime safety matters.

The Code does not cover:

- port operations on land;
- cargo handling on board a ship at a berth or at anchor, unless it affects the stability or safety of the ship, or safe navigation in the port or harbour; and
- port and ship security.

Role of Regional Council

Councils have a statutory function to ensure maritime safety within their regions. This function includes the safe movement of ships entering, leaving and navigating within ports and harbours. To accomplish this, the council must assign the responsibility for navigation safety and ensure that it is fully and regularly informed about the safe management of the port, this may include the appointment of a harbourmaster. Councils have the power to transfer some of their navigation safety functions and powers to council-controlled organisations or port operators.

Role of Harbourmaster

The council may appoint a harbourmaster to fulfil its responsibility for navigation safety in the port. The harbourmaster is responsible for regulation of maritime port activities and ensures that navigation and port maritime activities are safe and in compliance with legislation. A harbourmaster has several powers in relation to ensure maritime safety, including the ability to control the navigation of vessels in their waters, the mooring of ships and how ships receive or discharge cargo.

According to the Code, an appropriately qualified harbourmaster should be contactable at all times. The Maritime Transport Act 1994 s33D(4) states *"If maritime rules do not prescribe qualifications for harbourmasters, the regional council must satisfy itself that a person appointed as harbourmaster is suitably qualified to perform the functions of harbourmaster in respect of the relevant port, harbour, or waters."* There is currently no maritime rule relating to harbourmaster qualifications. While there is no legal obligation, it is generally accepted that a harbourmaster should have the same certificate of competency as the master of the largest ships to visit that port. In the case of Whanganui, the largest ship currently visiting the port is the 'MV Anatoki' which would require a minimum of a certificate of competence as Master on a ship less than 500 gross tons.

Role of Port Operators

A port operator has a statutory function to ensure their port and port facilities are in a fit condition for use by the ships the port serves including the provision of adequate channels and berths. A port operator must provide suitable arrangements to monitor and maintain, and provide aids to navigation for, the navigable channels necessary for the safe operation of the port. Any marine services necessary for the ports safe operation are also to be provided. Up-to-date information regarding the port facilities and operating limits must be made available to the port users and the harbourmaster.

Importantly, a port operator is responsible for providing a safe working environment and a safety system to ensure that the above operations and the discharge and loading of cargo, stores and personnel are carried out in a safe manner and that the facilities are fit for purpose. Port operators have a duty to operate, maintain and service their ports so there is no unnecessary risk or danger to people, the environment, or property on ships or at sea.

Code Application Assessment

This is a high-level risk assessment to determine where, and to what, operations and activities the Code will apply. This will set clearly defined boundaries to be set to the operations and physical area to which the Code may be applied. This does not mean the assessment cannot be reviewed and the boundaries amended as the operations, aspirations or other circumstances require.

A code application assessment may provide differing results for a council and a port operator but each will be tailored to the specific function and requirements of that party.

Risk Assessment

The next step in creating a safety management system (SMS) is to identify hazards and make a formal assessment of risks relating to marine-related activities and navigation. This risk assessment needs to include both historic events and accidents and identification of potential dangers.

The risk assessment should be carried out by the council in conjunction with the port operator according to general principles and terminology as found in AS/NZS ISO 31000:2009 *Risk Management – Principles and Guidelines.* Any existing systems for risk management used by the port operator and council may need to be adapted to incorporate marine-related risks.

This risk assessment process need not be onerous but should involve those parties familiar and competent in the various operations being assessed. Among those involved in a risk assessment process would be ship masters, shipping company staff, port operator staff, local fisherman and charter operators and those familiar with recreational boating activity in the area.

Safety Management System

From the risk assessment, efforts can be made to eliminate risks, to mitigate any remaining risks and develop a system for managing those risks (the SMS). The SMS can then be used as the basis of for the safe operation of the port. The SMS will include standard operating procedures for managing the port, including such factors as planned maintenance and determining the vessels that are suitable to use the port (e.g. limited by draft and/or tonnage).

Key features of an effective SMS include:

- regular collegial communication between the Harbourmaster and the port equivalent position to develop and maintain the SMS;
- involvement of key stakeholders in developing and maintaining the system;
- effective safety policies setting a clear direction for the organisation to follow;
- an effective management structure that has arrangements in place for delivering the policies;
- a planned and systematic approach to implementing the policies through the SMS;
- measurement of performance against agreed and documented standards to reveal when and where improvement is needed;
- regular reporting to the management of the Council and port operator so that there is effective information-sharing; and
- learning from relevant experience and applying agreed changes.

Any SMS should be appropriately written and set out for the personnel, area and operations it is applicable too.

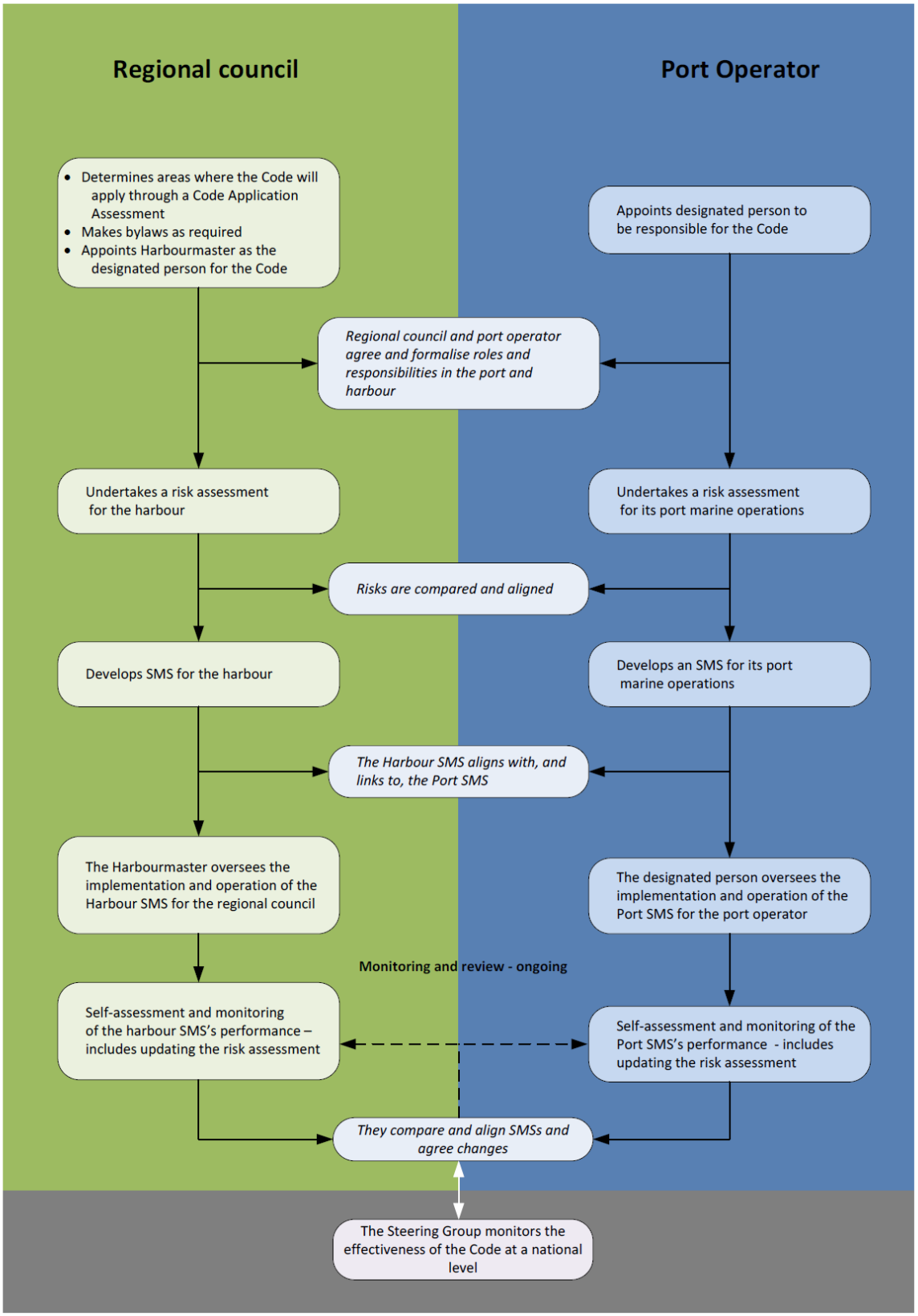
Operational Implementation

Many components of a SMS may already be in place for a particular port or harbour. In compiling a SMS there will likely be a need to supplement, amend and replace some of these documents. There is no single point at which a SMS can be considered 'finished' as it is an evolving system of management that will require periods of use and reflection to ensure that it is appropriate and effective.

Audit, Review and Improvement

To ensure the SMS and risk assessment remain up to date, effective and reflect the current risks, and the management of those risks, it is important a robust audit, review and improvement process is in place.

'Port Bowen' aground at Whanganui 1923



Quick guide to how the Code is applied

Exercise of Regional Council Functions

The Code reflects the standard arrangements within New Zealand where there is a port operator and a council both involved in the safe management of port and harbour operations. The functions of each of those parties is separate. It is accepted that in a few regions some, or all, of the functions of a council may be undertaken by another party.

The provisions of the Wanganui Harbour Board Act 1988 makes provision for the WDC to appoint a harbourmaster. This effectively places WDC in a position to undertake the functions outlined for a council within the Code. The implications of this are discussed in the section 'Whanganui Harbour Board Act' later in this report.

There are broadly three models used within New Zealand where a council does not undertake all of its maritime safety functions.

Independent Company:

> A council may contract an independent company to undertake some or all of its maritime safety functions. The geographical area of coverage and/or the type of maritime operations that are covered by this operating model need to be defined.

Port Operator:

> A council may delegate some or all of its maritime safety functions to a port operator. This allows the use of the specialist maritime skills that would be available within port operations personnel. This would include a council appointing a port operator staff member as a harbourmaster.

Support Services:

> A council may undertake some of the maritime safety functions itself and may contract for support with some parts e.g. the Chatham Islands Council employs a harbourmaster and undertakes all of the practical work at the islands but contract Environment Canterbury to provide a SMS, risk assessment and advice and support for any matters relating to large commercial vessels.

Any model for delivering the harbourmaster function needs to be carefully considered against the needs of the particular port, including shipping volumes, complexity of navigation and the normal operating patterns of the port. It may be unreasonable to have a full-time harbourmaster available to deal with large commercial vessels for a port that only receives one such ship visit per year. Conversely, a harbourmaster working one day per year may be insufficient for a large, busy commercial port.

While a council may not be involved in the day-to-day operations of a port, it remains responsible for maritime safety and should ensure regular updates, reports and involvement at a governance level.

Conflict of Interest

Whichever method of service delivery is chosen it is important to ensure that the exact responsibilities of each role and party are clearly defined. In the situation where a person or organisation is undertaking both the roles of port operator and harbourmaster it is vital that there is an identified assessment of any possible conflict of interest and a documented process for resolving those conflicts.

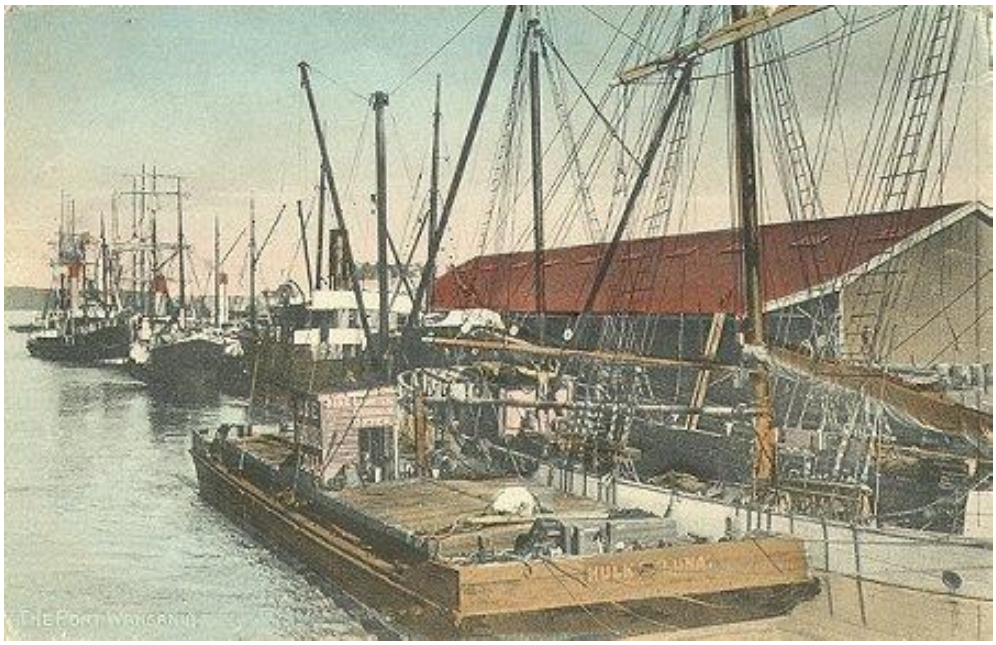
Whanganui Harbour Board Act

Under the Whanganui Harbour Board Act, the WDC has all the powers, functions and duties of a Harbour Board under the Harbours Act. Therefore, the WDC is responsible for navigation safety whether or not it imposes bylaws or appoints a harbourmaster. WDC must discharge its duties in relation to the harbour unless it delegates or grants those duties to some other entity or person. If it does grant or delegate the duties, the WDC still has liability for any act or omissions relating to the exercise or performance of any power, function or duty.[2]

The Harbours Act allows WDC to appoint a harbourmaster. If WDC were to appoint a harbourmaster the powers of any appointed harbourmaster would be those contained within the Harbours Act rather than the broader powers of a harbourmaster appointed under the Maritime Transport Act 1994.[3]

The Harbours Act also allows WDC to make bylaws. For the operations and vessels currently using the Port of Whanganui there are two Maritime Rules that cover most of the matters that a Bylaw may be required to manage. Maritime Rules 91 and 22 regulate the movement of vessels on the surface of water and the conduct of the operators. The provisions include collision avoidance, vessel speed, lifejacket carriage and age of vessel operators.

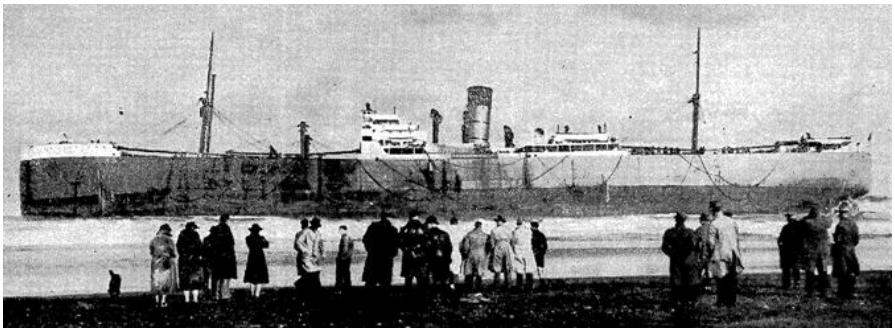
Compliance with the Code would allow WDC to assess whether it was fulfilling its functions and duties under the Whanganui Harbour Board Act. Further, it would allow assessment of the need for any bylaws or a harbourmaster, and if so, how they may best be provided.



[2] Appendix 1 item 21
[3] Appendix 1 items 18-20

Port of Whanganui - A Way Forward

To provide a robust and fit for purpose regime for the management of the port and maritime safety, I recommend a pathway that has been followed by other ports and councils in New Zealand. This pathway, set out below, will allow a reasoned and appropriate identification of risk, controls and desired outcome. Further to this, it will allow a flexible system to be developed that provides for expansion or contraction of operations at any time. The key being to ensure the management regime is appropriate to the operations and compliant with requirements at all times.



Step 1: Confirmation of Commitment

It is important that the owners of the Port Operator identify and commit to a clear set of outcomes. I would recommend these include:

- a statement identifying the vision and purpose of the port.
- adopting the principles of the Code
- clear guidance on any matters that are of particular relevance e.g. 100% cost recovery from users, limitation on any activity such as whether the port provides personnel or plant to load trucks from the store sheds and inclusion of any activity or operation the port is to provide.

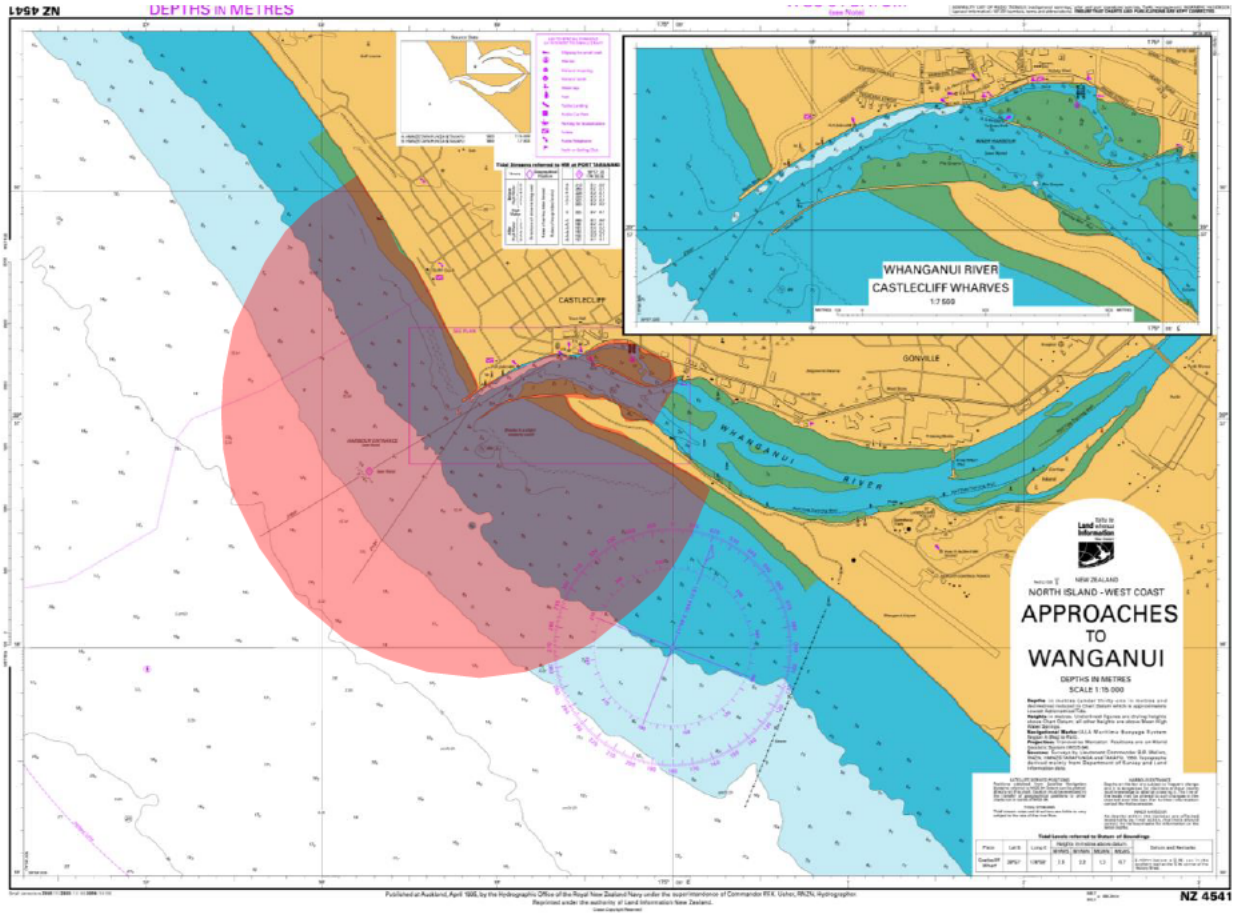
Step 2: Area and Operations of Interest (Code Application Assessment)

Identification of a geographical area and physical operations within that area that are of significance or relevance to the Port Operator. This assessment should look at the area upon which the port is dependent for its continued and safe operation. Once identified the operations within that area that are of importance should be identified.

The code provides guidance on this assessment. For the port of Whanganui I would suggest a starting point of:

Geographical area: all waters within the pilotage area described in Maritime Rule 90 but with an up-river limit of the current Q-West slipway. This encompasses the area that is most likely to be vital for the continued safe operation of the port. This area could be limited further to cover an area of just one nautical mile radius of the north mole head, as shown below, which encompasses only the port area and approach to the river mouth bar.

Maritime operations: ideally including all those associated with the operation of the port and vessels using the facilities of the Port Operator. This would allow assessment and management of the appropriate operations without taking responsibility for any operations or vessels not associated with the port itself i.e. vessels navigating further upstream or other activities with which the Port Operator has no interest or control.



Port of Whanganui possible area of interest 1 nm radius

Step 3: Risk Assessment

A risk assessment of the identified maritime operations within the geographical area of interest will aid identification of the possible risk scenarios that will need to be managed. This assessment will allow the current control measures to be assessed to aid identification of their suitability and the requirement for any additional control measures.

This assessment stage would need to include those persons familiar with the port and its operations e.g. port manager, ship owners, vessel masters, port work boat staff and recreational users. It is vital the assessment makes the best possible use of personnel and information to ensure it is as accurate and robust as possible. Future development of the port maritime operations may be assessed at this time or may be assessed later.

Step 4: Safety Management System

A SMS would then be compiled. In the case of the port of Whanganui, a single manual covering both maritime and shore based activities, processes, procedures and other pertinent information is recommended. With a small staff, and limited operations, it is beneficial to have all the information available in one place. An electronic document would be suitable provided all personnel have access to a computer and the skills to use one.

There is already a significant quantity of documentation in place and the compilation of the SMS, and the identification of any gaps in documentation should not be onerous.

Step 5: Operational Testing, Review and Improvement

The SMS will need to evolve. Therefore, a planned review and improvement process within the system is needed to ensure the SMS is able to respond appropriately to changes in legislation, operations at the port and incidents/observations.

Additional Considerations

In addition, the l considerations listed below will also form part of the process outlined above. These factors are dependent on Step 1 above and the declared purpose of the port. I have provided guidance below based on the following assumptions.

The Port Operator wishes to provide:

- a port facility for commercial cargo, fishing and recreational vessels
- berth and cargo facilities for vessels of the size that currently visit the port
- safe facilities and services in line with best practice
- a port that operates on a self-funding basis
- a sustainable system for the management and provision of services at the port
- a management system that allows facilities to grow and adapt to changes in vessel size and operations.

Appropriate vessel size

International standards such as those provided by the Permanent International Association of Navigational Congress (PIANC) provide guidance on navigational channels and vessel size. The minimum requirements of channel width and depth, and the diameter of turning areas for vessels can be determined using PIANC standards. These are minimum requirements and the manoeuvrability of vessels, available tugs, weather and tidal flow conditions need to be taken into account.

The current vessels of up to 51 m length and 4.2 m draft have been visiting Whanganui without incident. Whilst it may be possible for larger vessels to visit I would recommend that a maximum vessel dimension of 51 m length and 4.2 m draft be set. This does not rule out any future increase or decrease in these limits that may be required following suitable assessment.

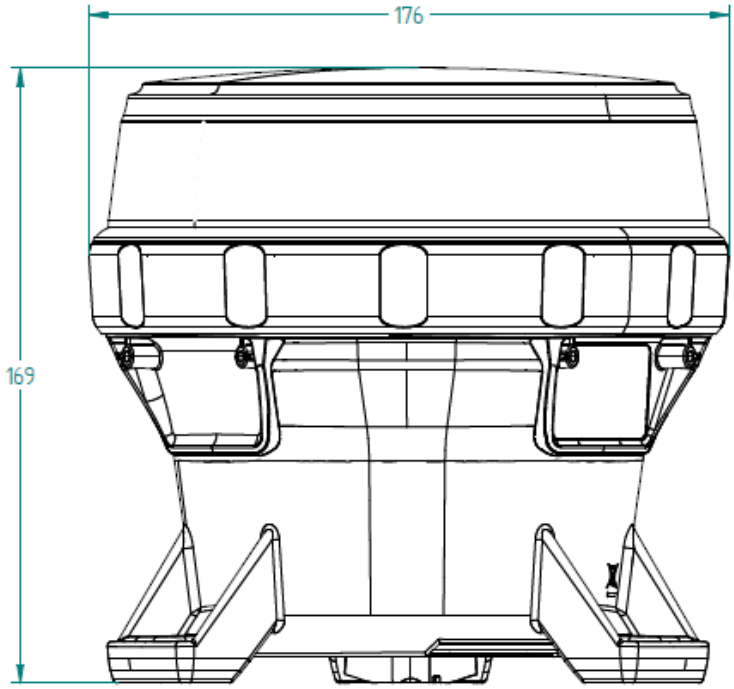
It should be noted that in providing facilities for ships of this size the Port Operator will need to retain the ability to dredge the area around No.1 wharf prior to a ships arrival to provide a safe berth and be able to provide up-to-date depth information for the bar. These requirements will mean the Port Operator must retain access to a port work boat and Hypack system and a dredging system (e.g. the long reach excavator and barge). It may be possible to contract in these services from an outside supplier when required.

Aids to navigation

The current Aids to Navigation (Aids) should be reviewed. The purpose of each individual Aid should be defined and categorised in line with the Guidelines for Providing Aids to Navigation in New Zealand [4]. Whilst a full assessment will be required my preliminary thoughts, following discussions with the owner of the 'MV Anatoki' and the Harbourmaster are:

[4] Guideline to best practice published by Maritime New Zealand

- main leads: remain in place to provide guidance for vessels over the main bar area. They should be lit; however, the colour may require changing to ensure they contrast with the background scenery when viewed from seaward.
- secondary leads: remain in place to provide guidance of vessels over the main bar when conditions require a more southerly approach. They require repair; however, they do not require to be lit.
- north and south mole head lights: replaced to provide a gauge for distance from, and location of, mole heads when departing at night (for commercial cargo ships) and to show the location of the mole heads to recreational vessels. Reduce light range to 2 or 3 nm and flashing isophase or occulting to allow for a maximum time visible. The lights may be moved back along the mole structures from their previous location to allow for suitable access and a sufficiently stable base to be constructed.



Self-contained 3 nm Carmanah M650 light (dimensions in mm)

Infrastructure

The current infrastructure will require assessment as to its fitness for purpose. Specifically:

North and south moles: are the current structures adequate for their intended purpose? Erosion and damage to both moles is clearly evident.

No.1 wharf: the suitability and working loads of the fendering, wharf bollards and wharf deck area/markings is not clear. The working loads of the bollards and wharf deck should be clearly marked and identified. The suitability of the fendering is uncertain.

Warehouse facilities and storage: the structural integrity of the buildings, load capability of land and building floors should be assessed and use of the areas managed accordingly.

Extent of port services

If not directed by WDC as to the extent of services to provide (as outlined in Step 1) the Port Operator must identify the extent of services to be provided. At a minimum level the Port Operator must provide aids to navigation, berths and facilities that are fit for purpose and ensure up-to-date information concerning the port is available. The provision of a safe working environment is also a key requirement. The extent of provision of the cargo handling services is at the discretion of the Port Operator. The Port Operator may only provide a ship operator with a berth and a safe work area for the ship operator to undertake their own cargo operations. Although as the Port Operator requires the long reach excavator for dredging to maintain a clear berth it would be reasonable to make use of this plant to provide a discharge service.

To maintain the current ship operations at Whanganui, I recommend the Port Operator provide the following services:

- safe navigational port access using the port work boat and Hypack system, berth dredging by long reach excavator and barge, aids to navigation and maritime staff on site for ship arrival and departure days. This includes the provision of berthing facilities;
- cargo discharge and load services (stevedoring) in situations where the long reach excavator is appropriate. For all other cargo operations, or movement of cargo to/from warehouses, the ship owner would be required to provide those services.

This would allow the port to continue to use required plant for multiple roles and allow the removal of excess plant that may be underutilised.

Warehouse and storage facilities

The provision of storage and warehouse facilities, unless directly associated with cargo operations, are unrelated to operation of the port and should be managed by an entity familiar with property management.

Plant

To effectively maintain the port for the current commercial cargo vessels the Port Operator will need to retain the following plant

Pilot vessel and Hypack system for the provision of depth information, vessel arrival assistance, barge towage and tug services.

Barge for use as a maintenance and dredge platform.

Long reach excavator for dredge work. The excavator may also be utilised for some cargo operations where appropriate to maximise use.

[redacted]

[redacted]

[5] Appendix 1

Cost recovery

The cost recovery of services provided by the Port Operator should be reviewed. The cost recovery of a service should be the starting point for any charges. However, there may be services where the Port Operator is unable to recover cost without making the service overly expensive and this may result in the service going unused. An example of this is the berthage and cargo operations of commercial cargo vessels. With the current number of annual ship visits the provision of the port work boat, dredging and berth provision and maintenance is unlikely to be recovered without making the service prohibitively expensive. In this case subsidising the service from storage and warehouse rentals may be appropriate until shipping volumes increase. Clear guidance should be provided by the owner of the Port Operator as identified in step 1.

Health and safety

There are currently various hazards within the port area. A greater focus on health and safety requirements is required. In the early stages of the port redevelopment this may be undertaken by isolation of older infrastructure with temporary fencing. An assessment of the various activities, work areas and buildings will be required and a health and safety plan developed. This should be an integral part of a safety management plan.

Recommendations

To provide WDC with confidence the port is being managed safely and in line with best practice I recommend WDC:

- identifies the vision and purpose for the port
- commits to comply with the New Zealand Port and Harbour Marine Safety Code
- provides the Port Operator clear guidance on any matters that are of particular relevance e.g. 100% cost recovery from users, limitation on any activity such as whether the port provides personnel or plant to load trucks from the storage sheds, inclusion of any activity or operation the port is to provide such as stevedoring services.

I recommend the Port Operator:

- implements a plan to deliver a port fitting the vision and purpose, including compliance with any guidance provided or directed by WDC
- complies with the requirements of the New Zealand Port and Harbour Marine Safety Code
- ensures the infrastructure at the port is fit for purpose, including wharves, mooring bollards, fendering, building structures and roadways.

With regard to technical maritime matters I recommend:

- the appropriate maximum vessel size for the current port and proposed configuration is 51 m length and 4.2 m draft
- the Aids be assessed with the aim of ensuring they have an identified purpose and are fit for that purpose. I suggest:
    - main leads: remain in place to provide guidance of vessels over the main bar area. They should be lit; however, the colour may require changing to ensure they contrast with the background scenery when viewed from seaward

    - secondary leads: remain in place to provide guidance of vessels over the main bar when conditions require a more southerly approach. They require repair; however; they do not require to be lit
    - north and south mole head lights: replaced to provide a gauge for distance from, and location of, mole heads when departing at night (for commercial cargo ships), and to show the location of the mole heads to recreational vessels. Reduce light range to 2 or 3 nm and flashing isophase or occulting to allow for a maximum time visible. The lights may be moved back along the mole structures from their previous location to allow for suitable access and a sufficiently stable base to be constructed.
- the services provided by the Port Operator be limited to the provision of berthing facilities and cargo loading/discharge by long reach excavator. The loading of trucks and movement of cargo or stores in warehouses should be ceased.
- the leasing of storage and warehouse facilities should be handed to a party familiar with property management.
- the current port plant is assessed against the needs of the services and vessel(s) type and size that WDC wishes to use the port. If current vessel type and size is to be retained I suggest:
    - Port work boat with the Hypack system is retained for its current uses
    - The barge is retained for dredge and maintenance work
    - The long-reach excavator is retained for dredge work and cargo loading/unloading
- [redacted]
    - [redacted]
    - [redacted]
    - [redacted]
    - [redacted]
- [redacted]

Appendix 1

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26 October 2016

Jim Dilley

Via email: yachtelenya@gmail.com

Dear Jim

RE: Whanganui Harbourmaster

1. Thank you for approaching us on this matter. You have sought our advice on the legislative and liability issues surrounding the appointment of a harbourmaster by the Whanganui District Council ("WDC"). We address the following questions below:

   (a) Does the WDC have authority to appoint a harbourmaster?

   (b) Is the WDC entering a field of liability by appointing an harbourmaster that it could otherwise avoid?

   (c) If WDC does appoint a harbourmaster under the Act, who should the harbourmaster report to?

2. We understand you are preparing an overview of advice on the Whanganui Port Project and proceed on the basis that the WDC, in any event, needs to adopt the relevant parts of the Port and Harbour Marine Safety Code.

3. We have not considered the role of the Port Company or the relationship between that company and the WDC.

Background

4. The powers and obligations of the WDC, in respect of the Whanganui Harbour, derive from a series of inter-related pieces of legislation.

5. The Wanganui Harbour Act 1988 ("the WHA"), an Act to abolish the Wanganui Harbour Board and vest the control of the Wanganui Harbour in Wanganui City Council, came into force on 1 July 1988. Section 4 of the WHA abolished the Wanganui Harbour Board, and s 5 granted the Wanganui City Council all the *powers, functions and duties* of a Harbour Board under the Harbours Act 1950 ("the Harbours Act").

6. The WDC succeeded to the powers of the Wanganui City Council under the Local Government (Manawatu-Wanganui Region) Reorganisation Order 1989.

7. A Harbour Board has numerous powers functions and duties provided for under the Harbours Act, including:

   (a) Section 42(1) provides that a Harbour Board can appoint a harbourmaster or other officer of the Harbour Board;

   (b) Section 42(2) provides that a Harbour Board can appoint suitable persons to be "honorary property wardens, and honorary launch wardens";

   (c) Section 232 provides that a Harbour Board can make bylaws:

   (d) Generally, to regulate any of the subject matter of the Harbours Act, to regulate the general conduct of the Board, or provide for the more effectual carrying out of the objects of the WHA; and

   (e) For any of a number of more specific purposes relating to harbour control, including navigation and the setting of various kinds of fees and charges.

8. The Harbours Act was repealed by s 10 of the Local Government Amendment Act (No. 2) 1999 ("the LG Amendment Act"). However, a savings provision in the LG Amendment Act (s 16(1)) provides that a "territorial authority responsible under any Act…for operating a port or harbour may continue from time to time to appoint a harbourmaster", while s 16(3) says that "[n]othing effected by or under this Act affects or limits … any other Act applying to any harbour."

9. After amendments to the Maritime Transport Act 1994 ("the MTA") in 2013, the MTA now provides, at s 33D(1), that a "regional council may appoint a harbourmaster for any port, harbour, or waters in its region" and at s 33D(2) that a regional council is required to appoint a harbourmaster if the Minister of Transport directs it to.

10. We do not consider that s 33D overrules or implicitly repeals the WHA or s 16(1) of the LG Amendment Act insofar as they give the WDC the power of a Harbour Board, including the power to appoint a harbourmaster. This is because the threshold for implied repeal is high. As the Court of Appeal said in *R v McNeish*:[1]

> *One provision repeals the other by implication if, but only if, it is so inconsistent or repugnant to the other that the two are incapable of standing together: if it is reasonably possible to consider the provisions so as to give effect to both, that must be done …*

11. The presumption against implied repeal is fortified in this case by the maxim *generalia specialibus non derogant* (the general does not derogate from the specific). The WHA specifically vests control of Whanganui Harbour in the (now) WDC. Section 16(1) of the LG Amendment Act specifically preserves the power of the WDC to appoint a harbourmaster, notwithstanding repeal of the Harbours Act. Section 33D of the MTA generally empowers regional councils to appoint harbourmasters. In our view, the earlier specific provisions must prevail over the later general one.

[1] *R v McNeish* [1982] 1 NZLR 247 (CA) at 248.

Does the WDC have authority to appoint a harbourmaster?

12. Yes. Under the WHA and the Harbours Act, the WDC still has all the powers, functions and duties of a Harbour Board under the Harbours Act, which includes, under s 42 of that Act, the power to appoint a harbourmaster.

13. Additionally, under the WHA, the WDC has the authority to grant any of its powers as a Harbour Board to any other person or entity, or to delegate them to the Harbour Committee. The WDC, however, would still be liable for any act or omission relating to the exercise of those powers, functions, or duties[2].

14. There is no obligation on the Council to appoint a harbourmaster. The Harbours Act provides that a Harbour Board may appoint a harbourmaster. We note that this is consistent with the position for other harbours under the MTA, where a regional council is not required to appoint a harbourmaster (unless the Minister so directs).

15. If the WDC does not appoint a harbourmaster, it is still responsible for navigation safety and harbour works and the various other duties imposed on it under the Harbours Act.

Is the WDC entering a field of liability by appointing a harbourmaster that they could otherwise avoid?

16. The issue in relation to harbourmasters is less a matter of liabilities incurred and more the fact that there are certain powers that only a harbourmaster can exercise.

17. As noted above, we consider that the combined effect of s 5 of the WHA (giving the WDC the powers of a Harbour Board under the Harbours Act) and s 16(3) of the LG Amendment Act is that the Harbours Act, insofar as it relates to the powers of a Harbour Board, is preserved in force in relation to Whanganui Harbour. If it were otherwise, the WHA would be deprived of effect, as the WDC would lack any powers to carry out its functions as a Harbour Board. Conversely, if no harbourmaster is appointed, there is no-one able to enforce the powers granted to the Harbour Board.

18. A harbourmaster had various powers under the Harbours Act, although many of those powers could also be exercised by another officer or person appointed by the Harbour Board for that purpose. In particular, a harbourmaster automatically had the powers under the Harbours Act to:

    (a) Require any pilot or holder of a pilotage exemption certificate to provide a written report on any pilotage activity they have conducted and observations made or incidents that occur during it;[3]

    (b) Examine applicants for pilotage exemption certificates;[4]

    (c) Require, if he or she considers that there is sufficient reason for doing so, a master that has a pilotage exemption certificate to accept the services of a pilot;[5]

    (d) Enter and remain on any ship within the harbour;[6]

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[2] Refer to the Wanganui Harbour Act 1988 s 7 and s 8
[3] Harbours Act 1950, s 214C.
[4] Harbours Act 1950, s 215(2). The Council can appoint another person or persons to perform the examinations.
[5] Harbours Act 1950, s 216(1).
[6] Harbours Act 1950, s 255(1). This power can also be exercised by other officers.

(e) Enter and remain upon any land or property of a port company within the harbour and carry out inspections.[7]

19. Further powers that the WDC could confer on a harbourmaster under the Harbours Act include powers to:

(a) Directly and personally control traffic in the harbour on any day or occasion of unusual or extraordinary traffic;[8]

(b) Ensure the observance of the bylaws by mooring, unmooring, placing, removing or casting off any ship that is not complying with them (after putting on board sufficient people to protect the ship if nobody is on board).[9]

20. Although harbourmasters have been given broader and clearer powers by s 33F of the MTA, "Harbourmaster" is defined in s 2(1) as meaning *a person appointed as a Harbourmaster under Part 3A of the Act* and is therefore inapplicable here, since the harbourmaster would, in this case, not be appointed under the MTA.

21. Under the WHA, the WDC has all the *powers, functions and duties* of a Harbour Board under the Harbours Act. The result, therefore, is that it is responsible for navigation safety whether or not it imposes bylaws or appoints a harbourmaster. It must discharge its duties in relation to the harbour unless it delegates or grants those duties to some other entity or person. If it does grant or delegate the duties, the WDC still has liability for *any act or omissions relating to the exercise or performance of any power, function or duty.*

22. Therefore, we conclude that the WDC is not entering a field of liability by appointing a harbourmaster, that it could otherwise avoid, because its liabilities arise as a consequence of duties under the Harbours Act, irrespective of whether a harbourmaster is appointed.

If WDC engages a harbourmaster who should the harbourmaster report to?

23. We agree that, if the WDC were to appoint a harbourmaster, it would be best practice to have the harbourmaster report to an officer of the WDC, as opposed to the Port Company. The only exception to this would be if the WDC were to delegate its powers, duties and functions to the Harbour Committee or transfer them to some other entity, in which case that body could appoint the harbourmaster and consequently the harbourmaster should report to it.

Conclusion

24. The legislation is somewhat archaic, and there have been no amendments to the legislative regime relating to the Whanganui Harbour since the WHA was enacted. The WDC effectively has all the powers, duties and functions of a Harbour Board under the Harbours Act and the Horizons Regional Council, in our view, has no authority in relation to Whanganui Harbour.

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[7] Harbours Act 1950, s 255(2). This power can also be exercised by a person authorised in writing by the harbourmaster.
[8] Harbours Act 1950, s 202(1). The Council can also empower another officer to exercise this power.
[9] Harbours Act 1950, s 232(8).

25. Although there is no requirement for the EWDC to appoint a harbourmaster, consideration must be given to the duties of the WDC as Harbour Board and whether those duties can be discharged without appointing a harbourmaster.

Yours faithfully
OCEANLAW NEW ZEALAND

Hayley Campbell BSc LLB
Solicitor

EMAIL: *hayley.campbell@oceanlaw.co.nz*